IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.776/2006
Om Prakash v/s The Municipal Board, Gangapurcity & Ors.

Date of Order : : September 6, 2006

HON'BLE MR. JUSTICE P.S. ASOPA

Mr.G.K. Garg, for the petitioner.
Mr.Jinesh Jain, for the respondents.

The case was listed for orders on the application under Article 226 (3) of the Constitution of India. Since the question involved in the matter is very short with regard to not taking of the rejoinder by the trial court on record, although permission was sought for filing of the same, therefore, both the parties consented that the matter may be finally heard and decided.

On 16.1.2006, the Civil Judge (JD) Gangapur City (Sawai Madhopur) passed an order that since rejoinder is not accompanied with the application, therefore, application under Order 8 Rule 9 of CPC is dismissed.

The submission of Mr.G.K. Garg, counsel for the petitioner is that approach of the trial court is not in accordance with the provisions of Order 8 Rule 9 CPC and the petitioner has been deprived of his valuable right of rejoinder as new points have been taken in the reply by the defendants.

The submission of Mr.Jinesh Jain, counsel for the Municipal Board is

that the petitioner was negligent in not filing the rejoinder and the same was not even accompanied with the application.

I have heard counsel for the parties and further considered rival submissions of the parties.

I am of the view that approach of the trial court in rejecting the application simply on the ground that the rejoinder is not accompanied with the application is not legal. However, it was expected from the petitioner to get ready the rejoinder at the time of seeking permission for filing the rejoinder.

In the interest of justice, one opportunity is allowed to the petitioner to file rejoinder to the written statement as well as rejoinder to the temporary injunction application, on payment of cost of Rs.500/-. However, the trial court is directed to decide the suit within a period of six months from today.

The writ petition stands disposed of as indicated above.

(**P.S. ASOPA) J.**

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